IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Criminal Appeal No. 1015 of 2001 **Decided on: October 9, 2006**
(Old NO. 450 of 1982)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 09.10.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Appeal NO.1015 of 2001.
(Old No.450 of 1982)

J.S. Bist son of Shri Ranjit Singh, resident of Lansdowne, District Pauri Garhwal.

…. Appellant.

Versus

State.

… Respondent.

Mr. Raman Kumar Sah, Advocate, for the appellant.
Learned A.G.A. for the repondent.

Hon'ble Prafulla C. Pant, J.

1. This appeal, preferred under section 374 (2) of Code of Criminal Procedure (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 22.01.1982 passed in criminal trial No. 2 of 1980 by learned Sessions Judge, Anti- Corruption, Dehradun, whereby appellant J.S.Bist has been convicted under section 409 of the Indian Penal Code,1860, (for brevity hereinafter referred as I.P.C.) and under section 5 (2) read with section 5(1)(c) of Prevention of Corruption Act, 1947 (for brevity hereinafter referred as P.C.Act). The trial court has sentenced the appellant under section 409 IPC to undergo imprisonment for a period of 18 months, and under section 5(2) read with section 5(1)(c) of P.C. Act to undergo imprisonment for a period of 18 months and also to pay fine of Rs. 5000/-, in default of payment of which, the appellant is directed to undergo imprisonment for a further period of six months. Both the sentences are directed to run concurrently.

2. Heard learned counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that in the year 1977 and 1978 appellant J.S.Bist worked as a cashier in the office of Director of Forest Education (for brevity hereinafter referred

as D.F.E.), in Forest Research Institute, Dehradun. His job was to maintain the cash book and he was entrusted with the money belonging to aforesaid office. During his posting as cashier the appellant misappropriated the following sums entrusted to him:

(i) he withdrew an amount of Rs.2000/- as leave travelling concession advance, without any sanction;

(ii) He withdrew another amount of Rs.2,000/- on 31.10.1977 as leave travelling concession advance, again without any sanction;

(iii) On 13.04.1977 he made entry of an amount of Rs. 2217.50p in the register (extract Ext.A 5) as payment of a bill of honorarium (Ext.A21) but did not make the payment;

(iv) He withdraw an amount of Rs. 200/- as forest advance on 30.04.1977, without any sanction;

(v) He also withdrew an amount of Rs. 3100/- as forest advance on 22.06.1977, without any sanction;

(vi) He again withdrew Rs. 1300/- as forest advance, without any sanction;

(vii) In the month of May, 1977 he embezzled Rs. 700/- out of the expenses incurred by the office;

(viii) Similarly in the month of August, 1977 he embezzled Rs. 3000/-, and

(ix) In the month of February, 1978 again the appellant embezzled Rs. 1500/- in the same manner.

4. Thus, the appellant in all, embezzled Rs.16,016.60p. A report was lodged with the Central Bureau of Investigation (for brevity hereinafter referred as C.B.I.) on 17.04.1979

regarding the aforesaid embezzlement and investigation was conducted by PW 12 R.K. Bhakta, who collected the evidence and after obtaining report of the handwriting expert, obtained necessary sanction from the competent authority and submitted charge sheet (Ext. A.59) against the accused/appellant.

5. The trial court, it appears that after giving necessary copies to the accused, framed charge of offence punishable under section 409 IPC and also that of offence punishable under section 5(2) read with section 5(1)(c) of P.C.Act, 1947 against the accused/appellant J.S.Bist who pleaded not guilty and claimed to be tried. He pleaded that he has not withdrawn the amount mentioned above but admitted that he encashed cheque of Rs. 1300/- on 22.06.1977 and another cheque on 11.07.1977. It was also pleaded by him that the account sheets were prepared as per the directions of D.F.E. and whatever amount was entrusted to him was handed to Sri S.P. Sharma, new cashier. In view of the denial of charge, on behalf of prosecution, PW 1 D.C.Pandey, D.F.E., PW 2 S.N.Kochar (employee of the office of D.F.E., who did not receive amount of his L.T.C.), PW 3 B.L.Khanna, PW 4 M.S.Thapa, PW 5 Dr. S.R.D. Guha, PW 6 Pratap Singh (the Examiner who did not receive his honorarium), PW 7 Ashok Kumar (another examiner who did not receive his honorarium), PW 8 S.S. Rajput (yet another examiner who did not receive his honorarium), PW 9 J.C. Verma (president Of F.R.I.), and PW.10 B.S. Bhandari, PW 11 S.P.Sharma (new cashier) and PW 12 R.K. Bhakta (the Investigating Officer) were got examined.

6. The oral and documentary evidence was put to the accused under section 313 Cr.P.C., in reply to which the accused/appellant alleged that he has acted under

instructions of the D.F.E. He has further stated that he was not holding charge of cashier. In defence DW 1 P.L.Bali was examined on behalf of the appellant before the trial court, who stated that accused was not appointed as cashier. However, in cross-examination the witness states that he does not know if the accused worked as cashier.

7. On examination of the evidence on record this Court has found that PW 1 D.C.Pandey, D.F.E. has stated on oath that accused/appellant was appointed as cashier and was incharge of cash book and cash balance. This witness has also stated that keys of the cash chest were with the accused/appellant who used to maintain the cash book. In his cross-examination he has admitted that though PW 2 S.N.Kochar was senior to the accused but when the post of cashier fell vacant, since he was working in the general section, as such, accused/appellant who was working as Upper Division Clerk in account section, was made incharge of the cashier. PW 3 B.L.Khanna and PW 4 M.S.Thapa who were working as Lower Division Clerk have also stated that the accused/appellant was the cashier and was holding the keys of the cash chest and used to maintain cash book. PW.9 J.C. Verma, President of the F.R.I. had the power to post accused/appellant as cashier in the office.

8. PW. S.R.D. Guha, PW 6 Pratap Singh, PW 7 Ashok Kumar and PW 8 S.S. Rajpur who were examiners and to whom the honorarium was to be paid, have stated that they were given honorarium only once in the year 1977 and thereafter they did not get their due of honorarium for the work they have done. PW 1 D.C.Pandey, D.F.E. has stated on oath that accused/appellant got encashed cheque (Ext.A 25) for Rs. 1300/-, an entry of which is made by him in the cash book (Ext.I) and he misappropriated the amount. This

witness further states that another cheque of Rs. 1300/- (Ext.A 24) was also got encashed by the accused/appellant showing payment in the cash book to himself and misappropriated the amount without the same being sanctioned. It is pertinent to mention here that the accused/appellant had admitted by making endorsement in the documents (Ext.A 9,Ext.A9/A, Ext.A 10, Ext.A10/A, Ext.A16 and Ext.A17) which corroborate the statement of the witnesses that it was the accused/appellant who got embezzled the various sums mentioned as earlier. The entries in question and the embezzlement are proved from the entries made by the accused/appellant in the cash book (Ext.A11 and Ext. A11/A) which also proves that by manipulating figure of Rs. 13,373.59p in place of Rs. 10,373.59p , the accused/appellant inflated the figure of Rs. 3000/- and misappropriated the amount. Similar false entries were found to have been made in cash book (Ext.2) by the accused/appellant by making inflated figure of Rs. 13,866.65p. instead of Rs. 12,366.65p, and as such, he misappropriated the amount . As to the L.T.C. advance drawn without sanction on 12.04.1977 and 31.10.1977, the same are also proved from the statements of the witnesses and entries made in the register.

9. On behalf of the appellant it is argued that the sanction required under P.C.Act was accorded on 30.06.1980 while the First Information Report had already lodged on 07.04.1979. On the basis of it, it is further argued that the conviction of the appellant is bad in law. I do not see force in the argument of the learned counsel for the appellant, for the reason that sanction is required under the P.C. Act not for lodging of the FIR but for prosecution. Sanction has been found to have been given before prosecution. As such, there

is no illegality in the conviction recorded by the trial court on this count.

10. Sri Raman Kumar Sah, learned counsel for the appellant drew attention of this court to Section 5 of P.C. Act, 1947 and also to the provision contained in Section 405 IPC, and argued that since the money was not in the dominion of the accused/appellant and the same was in the dominion of D.F.E. (Director of Forest Education), as such he can not be convicted for an offence punishable under section 5(2) read with section 5(1)(c) of P.C.Act f or for the alleged offence punishable under section 409 IPC. I am unable to accept the contention of the learned counsel for the appellant for the reason that between the words “entrusted with the property” and the expression “within dominion over property”, word “OR” finds place in the section referred. As such, even if the dominion is said to have been of D.F.E., the entrustment of the cash was with the accused/appellant who was the cashier in the relevant period. From the statement of witnesses examined on behalf of prosecution it is clearly established that the accused/appellant who was working as cashier was holding keys of the cash chest and was also responsible for maintaining the cash book, as such, he was “entrusted” of the cash lying in the cash chest.

11. On behalf of appellant, attention of this Court was drawn to the case of **Om Prakash Vs State of Haryana- A.I.R. 1980 Supreme Court page 476** and it is submitted that a clerk can not be held liable for the offence punishable under section 409 IPC if he was the person who had no such official duty to discharge the functions of the accountant. I have gone through the referred case law. The acquittal recorded in said case by the Apex Court was for the reason that the drawing and disbursing officer, without verifying the

Complainants against the accused, made report and that was a case of only delayed payments of the employees. In the present case not only the criminal misappropriation is proved on the part of the accused/appellant but it is also proved that he was not mere Upper Division Assistant but was appointed as cashier to discharge the functions of said post.

12. Lastly, it is submitted on behalf of the appellant that the punishment awarded by the trial court is too harsh as the appellant had already lost the job. Considering the nature of the offence and that it is not a case of a single transaction, this Court is of the view that the sentence of 18 months imprisonment awarded by the trial court can not be said to be unreasonable under section 409 IPC and 18 months imprisonment and fine of Rs. 5000/- under section 5(2) read with section 5(1)(c) of P.C. Act, 1947.

13. For the reasons as discussed above the appeal is liable to be dismissed and the same is dismissed. The appellant is on bail. His bail is cancelled. The trial court shall take the appellant into custody to make him serve out the sentence awarded by the trial court.

(Prafulla C. Pant)

Dated: 09.10.2006.

Negi.